

ESTTA Tracking number: **ESTTA284594**

Filing date: **05/18/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92050960
Party	Defendant Spin Master Ltd.
Correspondence Address	Michael T. Murphy K&L Gates LLP P.O. Box 1135 Chicago, IL 60690 UNITED STATES chicago.trademarks@klgates.com
Submission	Motion to Dismiss - Rule 12(b)
Filer's Name	Michael T. Murphy
Filer's e-mail	michael.murphy@klgates.com, chicago.trademarks@klgates.com, janice.hemphill@klgates.com
Signature	/Michael T. Murphy/
Date	05/18/2009
Attachments	Motion To Dismiss On The Pleading.pdf (3 pages)(75749 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Registration No.
2944406
Trademark: S SPIN MASTER
Registered: April 26, 2005

NSM Resources Corporation)	
)	
)	
Petitioner,)	Cancellation No.: 92050960
)	
v.)	
)	
Spin Master LTD.)	
)	
)	
Registrant)	

MOTION TO DISMISS ON THE PLEADINGS

Registrant, Spin Master LTD. hereby moves the Honorable Board to dismiss the present Cancellation on the grounds that the Petitioner alleges no statutory ground for cancellation and any allegation of likelihood of confusion between Petitioner's mark HUCK and Registrant's mark SPIN MASTER & Design must fail as a matter of law.

Petitioner in the second unnumbered paragraph of the Petition makes a vague allegation of damage but fails to state any statutory grounds for cancellation. In fact, numbered paragraph 2-5 makes clear that the filing of the petition is "pay back" for

Registrant's alleged failure to acknowledge Petitioner's purported rights in the unrelated trademark HUCK.

Even assuming that Petitioner's allegations can be construed as an allegation of likelihood of confusion under section 2(d) of the Trademark Act, the Petition must be dismissed as a matter of law as the trademarks HUCK and HUCK DOLL on one hand and SPIN MASTER on the other cannot be found under any set of facts to be confusingly similar. There is no similarity of sound, appearance, meaning or connotation – *not even a single letter* is in common between SPIN MASTER and HUCK. As such, there can be no likelihood of confusion as a matter of law between these marks even if the goods and services were absolutely identical, which they are not.

Furthermore, the basis for filing the Cancellation is puzzling as it makes no sense from the face of the petition, because Petitioner's true motivation is Registrant's refusal to pay ransom to Petitioner for use of its own trademarks. Petitioner has filed similar cases at the Board and elsewhere, as described by the Registrant in its motion to dismiss in Cancellation No. 92050732. In the above case, Petitioner sought to cancel Target registration No. 1340989-PRO SPIRIT again based on rights in the HUCK mark. As such, this filing is not just misguided, but another example of misuse of the cancellation procedures before the TTAB

Finally, and in the alternative, Petitioner fails to state a claim upon which relief can be granted as Petitioner fails to articulate any rights in a mark having any relevance to the present proceeding to provide standing to maintain the cancellation.

In view of the foregoing, Registrant respectfully requests that the Petition for Cancellation be dismissed with prejudice.

Respectfully submitted,

s/Michael T. Murphy/s
Michael T. Murphy
K&L GATES LLP
P.O. Box 1135
Chicago, IL 60690
Telephone: (202) 778-9176
Facsimile: (312) 827-8185